

STATE OF VERMONT
CONTRACT AMENDMENT

It is hereby agreed by and between the State of Vermont, Department of Vermont Health Access (the "State") and JH Public Health Consulting, LLC, with a principal place of business in Hyde Park, Vermont (the "Contractor") that the Contract between them dated September 12, 2018, Contract # 37372, as amended to date, (the "Contract") is hereby amended effective September 1, 2020 as follows:

- I. **Maximum Amount.** The maximum amount payable under the Contract, wherever such reference appears in the Contract, shall be changed from \$185,000.00 to \$284,000.00, representing an increase of \$99,000.00.
- II. **Contract Term.** The Contract end date, wherever such reference appears in the Contract, shall be changed from August 31, 2020 to August 31, 2021. The Contract Term may be renewed for one (1) additional one-year period as agreed by both parties.
- III. **Attachment A, Statement of Work.** The Statement of Work in Attachment A is hereby deleted in its entirety and replaced by the Attachment A attached to this Amendment.

ATTACHMENT A
STATEMENT OF WORK

A. Availability

Contractor shall provide Quality Improvement (QI) facilitation work as further defined in this Statement of Work.

Contractor shall be regularly available to respond to questions and communications during typical working hours (e.g. 8:30 am – 5:00 pm), Monday through Friday, 48 weeks per year, to perform the responsibilities and services set out in this Contract. The State will approve reasonable requests for alternative availability with advance notice or due to extenuating circumstances. The State may withhold or decrease payment on a pro-rata basis if limitations on facilitator availability impacts Contractor's ability to satisfactorily perform its obligations.

B. Caseload

Contractor shall provide support, as assigned by the State, to Blueprint practices (Patient Centered Medical Homes, Women's Health Initiative practices, or Medication Assisted Treatment practices) and community entities within an assigned Health Service Area (HSA). Contractor is expected to carry an active caseload of between 8-15 practices. The number of assigned practices and community entities may be decreased in consultation with the State if the needs of the assigned practices and community entities are either beyond the reasonable capacity of Contractor to serve effectively or increased if Contractor is meeting at an organizational level with a set of practices, rather than with individual practices. The State may reduce payment

under the terms detailed in attachment B if Eligible Practices* or Community Entities* wish to discontinue working with Contractor.

*Eligible Blueprint Practice is defined as a practice of one or more health care providers having a distinct location and/or operational structure, and that takes part, or is seeking to take part, in one or more of the following Blueprint health care reform initiatives:

- Recognition by the National Committee for Quality Assurance (NCQA) as Patient Centered Medical Home;
- Blueprint's Women's Health Initiative; and/or
- Hub and Spoke System of Care for Medication Assisted Treatment including Hub programs recognized as Patient Centered Specialty Practices.

*Community Entity is defined as a group of local community partners and stakeholders tasked by Blueprint or another DVHA health care reform program with developing and implementing collaborative strategies for achieving DVHA's and/or Contractor's population health goals within the local HSA. Examples of Community Entities include unified community collaboratives, accountable communities for health, and topic-based work groups.

Contractor may be asked to provide short term support to practices or community entities in neighboring HSAs in times of demand for activities such as learning collaboratives, during vacancies, or during scheduled time off for other QI facilitators.

C. General Tasks

1. Practice Assessment

Contractor shall formally assess each assigned practice at least annually. This assessment shall identify:

- a. Any resources and processes which the practice will need to establish before commencement of project work;
- b. Any education or cultural changes which need to take place before commencement of project work;
- c. Whether the practice will be required to meet any external quality standards and any known deadlines for meeting the standards;
- d. Whether the practice has expressed interest in pursuing the implementation of a Blueprint or Blueprint-supported project or initiative;
- e. Whether the practice has any goals related to continuous quality improvement; and
- f. Whether there are any other improvements or opportunities of note.

2. Practice Meetings and Services

Contractor shall meet in person or virtually with each assigned practice regularly. Contractor and practices will determine the frequency of meetings, either bi-weekly or monthly, depending on practice needs and priorities. Between meetings, Contractor shall be available by phone or email to respond to practice questions and provide regular

consultation on clinical and QI topics. Contractor shall provide the following to assigned practices, as appropriate:

- a. Minutes or a summary of all regular meetings;
- b. Team charters or group agreements;
- c. A summary of any practice assessment completed;
- d. A copy of all quality improvement tools used (e.g. PDSA/A3 Forms/Root Cause Analysis/Workflow diagrams); and
- e. A copy of all documented outcomes of facilitation/work projects.

3. Community Entity Meetings and Services

Contractor shall attend scheduled Community Entity meetings and applicable quality sub-workgroup meetings. Between meetings, Contractor shall provide regular consultation in response to community collaborative questions via phone and e-mail. Contractor shall provide the following to assigned Community Entities, as appropriate:

- a. Minutes or a summary of all regular meetings;
- b. Team charters or group agreements;
- c. A copy of all quality improvement tools used (e.g. PDSA/A3 Forms/Root Cause Analysis/Workflow diagrams); and
- d. A copy of all results.

4. Participation in Blueprint State Network

Contractor shall make every effort to:

- a. Attend all QI and Blueprint meetings and calls scheduled by the State, including Expansion and Quality Improvement Program (EQuIP), initiative specific meetings, All Field Team meetings, and the Blueprint annual conference;
- b. As required by the State, attend regularly scheduled meetings of other facilitators, and other ad-hoc conference calls, meetings, or trainings with State and other facilitators;
- c. Participate in bi-weekly (or monthly if determined by State) check-in calls with the State Program Manager;
- d. Provide peer-to-peer mentoring and support to other contracted QI facilitators, ACOs and State staff; and
- e. Check and contribute as appropriate to the statewide facilitator web-based communication and information sharing system provided by the State.

If Contractor is unable to participate in any of the above activities, notice shall be given to the State (with the exception of extenuating circumstances), and the Contractor shall make every effort to remain informed and fulfill duties assigned during meetings or calls.

5. Practice Capacity Building

Contractor shall assist each assigned practice in establishing or implementing the following to support its QI activities:

- a. Establishment of a functional multi-disciplinary QI team (Practice Team) composed of clinical providers and administrative staff;
- b. Ownership and investment on the part of the Practice Team in the continuous QI process;
- c. The ability of the Practice Team to review evaluation data and understand how the data reflects the practices' progress and outcomes;
- d. The ability of the Practice Team to use the tools provided by the facilitator for continuous QI;
- e. Integration of shared decision making, self-management support, panel management processes, cross-organization care coordination, and mental health and substance abuse treatment into clinical practice;
- f. Incorporation of health and community services and tools for cross-organization care coordination into practice workflow;
- g. Incorporation of strategies to improve care and measure change in health care delivery systems into daily practice, such as mentoring, coaching, and team facilitation;
- h. Understanding by the practice of the standards and process for practice recognition;
- i. Understanding by the practice of the process of QI, including evidence, stages in the process, and roles and responsibilities of the facilitator, practice, and other stakeholders;
- j. Understanding by the practice of the benefit of continuous QI in the context of Vermont health care reform; and
- k. Involvement and communication of practice leadership.

6. Community Capacity Building

Contractor shall assist assigned community entities in establishing or implementing the following to support their QI activities:

- a. Ownership and support for continuous QI activities of the Community Entity;
- b. Consensus and ownership among participants on the priorities selected by the Community Entity;
- c. Establishment of strong relationships between clinical and non-clinical participants in the Community Entity;
- d. Development and implementation of processes and tools for cross-organization care coordination; and
- e. Development and implementation of strategies for communication and learning between community partners, such as learning collaboratives or online learning environments.

7. Compliance with External Quality Standards

Contractor shall perform the following for each assigned practice that is required to meet an external quality standard:

- a. Guide each practice team through the process;
 - b. Provide practices with a proposed timeline for meeting the applicable standard;
 - c. Assist practices in planning and implementing tasks and interventions as necessary to meet the required standards; and
 - d. Report the progress of each practice through applicable portals and support reporting of clinical outcomes through applicable registries.
8. Contractor shall perform the following for each practice engaged in a project or initiative run by or supported by Blueprint:
- a. Ensure that the practices, with input from the HSA Program Manager, creates an implementation plan and timeline for the attestation requirements for participation in the initiative or program;
 - b. Complete a program or initiative-specific practice assessment to identify opportunities for ongoing QI;
 - c. Assist practices in performing tasks necessary for attestation and QI activities required under the project or initiative; and
 - d. Assist in required reporting according to the implementation plans.
9. Contractor shall perform the following for each practice engaged in continuous QI projects:
- a. Provide each practice with a QI plan that describes the practice's desired aims, lists project participants, and outlines the methods and strategies that will be used;
 - b. Assist practice teams to use data and evidence-based practices in selecting, prioritizing, implementing, and evaluating their opportunities, aims, and interventions; and
 - c. Tailor QI and educational interventions to meet their internal needs and external requirements according to assessment.
10. Contractor shall perform the following in consultation with the Community Entity when assisting assigned community entities in continuous QI projects:
- a. Identify local priorities for improving health and wellbeing in the community;
 - b. Identify community resources to address these priorities;
 - c. Use data to prioritize and select interventions and aims;
 - d. Use data and evidence-based practices to implement interventions; and
 - e. Measure and monitor the progress of interventions and achievement of aims.

Inability or unwillingness of an assigned practice or Community Entity to participate in the above described QI facilitation tasks shall be reported to the State; and if the State determines that every effort has been made on the part of the QI facilitator to engage the practice or

entity, this shall not be used by the State as consideration for breach of Contract by the Contractor.

D. Accountability and Progress Reporting

1. Practice and Entity Report

Contractor shall provide a monthly report based on the template provided by the State. The report shall:

- a. List each of its assigned practices and community entities;
- b. Provide a primary contact and contact information for each practice or Community Entity; and
- c. Report the status or primary focus of the practice or entity following assessment by Contractor.

Contractor shall update the Practice and Entity Report each month with any changes and shall document the dates of required meetings with practices and community entities from that month.

2. Contractor shall be evaluated by the practices and community entities. Each practice and Community Entity will report to the HSA Program Managers at least quarterly regarding its experience with the QI Facilitator. A reporting mechanism and process shall be provided by the HSA Program Manager or QI Facilitator. The practices and entities will be asked to evaluate the QI Facilitator's effectiveness in contributing to the Capacity Building and Project Work as described in this agreement and on the QI Facilitator's maintenance of the competencies required under this agreement. The Program Manager will report its findings to the Blueprint. Practices and Entities may also report concerns directly to the State. The State will forward all communications citing areas of concern to the Contractor within five (5) business days of receipt.
3. Contractor shall document the initiation, execution, and completion or conclusion of all projects undertaken by an assigned practice or entity using the form provided. Contractor shall identify:
 - a. The practice or entity;
 - b. The project type;
 - c. A summary of the project;
 - d. The start date or kickoff date of the project;
 - e. The main QI tools and strategies used in the intervention;
 - f. A discrete aim or goal by which successful completion of the project may be measured; and
 - g. A target completion date.

E. Competency

Contractor shall maintain the knowledge, skills and expertise necessary to provide effective service under this Contract. The competencies required under this Contract include, but are not limited to:

1. Change and Adult Learning Theories;
2. Basics of Quality Improvement Facilitation;
3. Health Care Systems / Health Service Models;
4. Quality Improvement Approaches & Tools;
5. Workflow Mapping;
6. Data Collection and Analysis;
7. Creating Quality Capacity in Practice and Community Settings;
8. Managing Relationships;
9. Implementing Care Teams;
10. Panel Management;
11. Self-Management;
12. Care Coordination; and
13. Professionalism.

The State shall offer reimbursement, under the terms detailed in Attachment B, if Contractor successfully earns initial accreditation as a Certified Professional in Healthcare Quality (CPQH).

IV. **Attachment B, Payment Provisions**. The Payment Provisions in Attachment B are amended as set forth below:

a. Paragraph 5.A of Attachment B is amended by the addition of the following:

iii. Facilitation (September 1, 2020 to August 31, 2021)

- a. From September 1, 2020 to August 31, 2021, Contractor shall invoice the State up to a maximum of \$7,833.33 per calendar month for September 2020 through July 2021 and \$7,833.37 for the month of August 2021 for Facilitation activities outlined in attachment A, not to exceed an annual sum of \$94,000.00.

iv. Travel and Training (September 1, 2020 to August 31, 2021)

From September 1, 2020 to August 31, 2021, the budget for travel and training will not exceed \$5,000 for the period of the Contract. The 'Travel, Mileage and Other Expenses' form (Appendix I) must be completed, signed and submitted with an invoice where the expenses are claimed. In relation to expenses, Contractor shall submit supporting documentation such as receipts, agendas, or other supporting documentation as

State may require. Mileage shall be reimbursed at the prevailing State rate at the date of travel.

- a. Contractor shall invoice state for actual miles traveled to and from in-person meetings with assigned practices outside Contractor's HSA, and to facilitator meetings, and otherwise as agreed with the State.
- b. Contractor shall invoice State monthly for the actual expenses incurred for approved training, consultation, and travel, in accordance with this Contract, and provide evidence of prior written approval by State, which may be an email.
- c. Contractor shall invoice the State for registration and study materials for the successful completion of accreditation as a CPQH up to \$700.
- d. The State may withhold funds up to the amount reimbursed for accreditation if the Contract's end date is less than six months after the date the accreditation is earned.
- e. All certification costs incurred will be determined after the date of successful completion of accreditation as a CPQH. Proof of successful completion and receipts associated with attaining certification such as registration fees, and study materials must be submitted before reimbursement will be made.

- b. Paragraph 5.D of Attachment B is amended to include the following budget table:

September 1, 2020 - August 31, 2021

Budget Category	Monthly Budget	Annual Budget
QI Facilitation	\$7,833.33 (September 2020 through July 2021) \$7,833.37 (August 2021)	\$94,000.00
Travel and Training		\$5,000.00*
Total Annual Budget		\$99,000.00

*Contractor shall invoice the State up to \$700 for registration and study materials for the successful completion of accreditation as a Certified Professional in Healthcare Quality, upon showing proof of successful completion and associated receipts. The State may withhold funds up to the amount reimbursed for accreditation if the Contract's end date is fewer than

six months after the date the accreditation is earned.

c. Paragraph 5 is amended to add the following section 5.E:

Monthly Facilitation payments under this Contract may be reduced by \$979.00 per practice, if fewer than eight (8) Eligible Practices wish to continue working with the Contractor or if the Community Entity no longer wishes to work with the Contractor.

V. **Attachment E, Standard State Provisions for Contracts and Grants.** Attachment E is hereby deleted in its entirety and replaced by the Attachment E effective 05/22/2020 attached to this Amendment.

Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this Contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.

Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs). Contractor is under no obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

Certification Regarding Suspension or Debarment. Contractor certifies under the pains and penalties of perjury that, as of the date this Contract amendment is signed, neither Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Contractor further certifies under pains and penalties of perjury that, as of the date this Contract amendment is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing-contracting/debarment>

This document consists of 18 pages. Except as modified by this Amendment No. 2, all provisions of the Contract remain in full force and effect.

The signatures of the undersigned indicate that each has read and agrees to be bound by this Amendment to the Contract.

STATE OF VERMONT

DEPARTMENT OF VERMONT HEALTH ACCESS

CONTRACTOR

JH PUBLIC HEALTH CONSULTING, LLC

CORY GUSTAFSON, COMMISSIONER DATE
NOB 1 South, 280 State Drive
Waterbury, VT 05671-1010
Phone: 802-241-0239
Email: Cory.Gustafson@vermont.gov

JACLYN HOLDEN DATE
409 Bolder Drive
Hyde Park, VT 05655
Phone: 435-640-8432
Email: jhphconsulting@gmail.com

**ATTACHMENT E
BUSINESS ASSOCIATE AGREEMENT**

SOV CONTRACTOR/BUSINESS ASSOCIATE: JH PUBLIC HEALTH CONSULTING, LLC

SOV CONTRACT NO. 37372 **CONTRACT EFFECTIVE DATE:** 09/12/2018

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its Department of Vermont Health Access (“Covered Entity”) and Party identified in this Agreement as Contractor or Grantee above (“Business Associate”). This Agreement supplements and is made a part of the contract or grant (“Contract or Grant”) to which it is attached.

Covered Entity and Business Associate enter into this Agreement to comply with the standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 (“Privacy Rule”), and the Security Standards, at 45 CFR Parts 160 and 164 (“Security Rule”), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations. Terms defined in this Agreement are italicized. Unless otherwise specified, when used in this Agreement, defined terms used in the singular shall be understood if appropriate in their context to include the plural when applicable.

“*Agent*” means an *Individual* acting within the scope of the agency of the *Business Associate*, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c) and includes Workforce members and *Subcontractors*.

“*Breach*” means the acquisition, Access, Use or Disclosure of *Protected Health Information (PHI)* which compromises the Security or privacy of the *PHI*, except as excluded in the definition of *Breach* in 45 CFR § 164.402.

“*Business Associate*” shall have the meaning given for “Business Associate” in 45 CFR § 160.103 and means Contractor or Grantee and includes its Workforce, *Agents* and *Subcontractors*.

“*Electronic PHI*” shall mean *PHI* created, received, maintained or transmitted electronically in accordance with 45 CFR § 160.103.

“*Individual*” includes a Person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“*Protected Health Information*” (“*PHI*”) shall have the meaning given in 45 CFR § 160.103, limited to the *PHI* created or received by *Business Associate* from or on behalf of Covered Entity.

“*Required by Law*” means a mandate contained in law that compels an entity to make a use or disclosure of *PHI* and that is enforceable in a court of law and shall have the meaning given in 45 CFR § 164.103.

“*Report*” means submissions required by this Agreement as provided in section 2.3.

“*Security Incident*” means the attempted or successful unauthorized Access, Use, Disclosure, modification, or destruction of Information or interference with system operations in an Information System relating to *PHI* in accordance with 45 CFR § 164.304.

“*Services*” includes all work performed by the *Business Associate* for or on behalf of Covered Entity that requires the Use and/or Disclosure of *PHI* to perform a *Business Associate* function described in 45 CFR § 160.103.

“*Subcontractor*” means a Person to whom *Business Associate* delegates a function, activity, or service, other than in the capacity of a member of the workforce of such *Business Associate*.

“*Successful Security Incident*” shall mean a *Security Incident* that results in the unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System.

“*Unsuccessful Security Incident*” shall mean a *Security Incident* such as routine occurrences that do not result in unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System, such as: (i) unsuccessful attempts to penetrate computer networks or services maintained by *Business Associate*; and (ii) immaterial incidents such as pings and other broadcast attacks on *Business Associate's* firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above with respect to *Business Associate's* Information System.

“*Targeted Unsuccessful Security Incident*” means an *Unsuccessful Security Incident* that appears to be an attempt to obtain unauthorized Access, Use, Disclosure, modification or destruction of the Covered Entity's *Electronic PHI*.

2. Contact Information for Privacy and Security Officers and Reports.

2.1 *Business Associate* shall provide, within ten (10) days of the execution of this Agreement, written notice to the Contract or Grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer of the *Business Associate*. This information must be updated by *Business Associate* any time these contacts change.

2.2 Covered Entity's HIPAA Privacy Officer and HIPAA Security Officer contact information is posted at: <https://humanservices.vermont.gov/rules-policies/health-insurance-portability-and-accountability-act-hipaa>

2.3 *Business Associate* shall submit all *Reports* required by this Agreement to the following email address: AHS.PrivacyAndSecurity@vermont.gov

3. Permitted and Required Uses/Disclosures of PHI.

3.1 Subject to the terms in this Agreement, *Business Associate* may Use or Disclose *PHI* to perform *Services*, as specified in the Contract or Grant. Such Uses and Disclosures are limited to the minimum necessary to provide the *Services*. *Business Associate* shall not Use or Disclose *PHI* in any manner that would constitute a violation of the Privacy Rule if Used or Disclosed by Covered Entity in that manner. *Business Associate* may not Use or Disclose *PHI* other than as permitted or required by this Agreement or as *Required by Law* and only in compliance with applicable laws and regulations.

3.2 *Business Associate* may make *PHI* available to its Workforce, *Agent* and *Subcontractor* who need Access to perform *Services* as permitted by this Agreement, provided that *Business Associate* makes them aware of the Use and Disclosure restrictions in this Agreement and binds them to comply with such restrictions.

3.3 *Business Associate* shall be directly liable under HIPAA for impermissible Uses and Disclosures of *PHI*.

4. Business Activities. *Business Associate* may Use *PHI* if necessary for *Business Associate's* proper management and administration or to carry out its legal responsibilities. *Business Associate* may Disclose *PHI* for *Business Associate's* proper management and administration or to carry out its legal responsibilities if a Disclosure is *Required by Law* or if *Business Associate* obtains reasonable written assurances via a written agreement from the Person to whom the information is to be Disclosed that such *PHI* shall remain confidential and be Used or further Disclosed only as *Required by Law* or for the purpose for which it was Disclosed to the Person, and the Agreement requires the Person to notify *Business Associate*, within five (5) business days, in writing of any *Breach* of Unsecured *PHI* of which it is aware. Such Uses and Disclosures of *PHI* must be of the minimum amount necessary to accomplish such purposes.

5. Electronic PHI Security Rule Obligations.

5.1 With respect to *Electronic PHI*, *Business Associate* shall:

a) Implement and use Administrative, Physical, and Technical Safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312;

b) Identify in writing upon request from Covered Entity all the safeguards that it uses to protect such *Electronic PHI*;

c) Prior to any Use or Disclosure of *Electronic PHI* by an *Agent* or *Subcontractor*, ensure that any *Agent* or *Subcontractor* to whom it provides *Electronic PHI* agrees in writing to implement and use Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of *Electronic PHI*. The written agreement

must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *Electronic PHI*, and be provided to Covered Entity upon request;

d) Report in writing to Covered Entity any *Successful Security Incident* or *Targeted Unsuccessful Security Incident* as soon as it becomes aware of such incident and in no event later than five (5) business days after such awareness. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available;

e) Following such *Report*, provide Covered Entity with the information necessary for Covered Entity to investigate any such incident; and

f) Continue to provide to Covered Entity information concerning the incident as it becomes available to it.

5.2 Reporting *Unsuccessful Security Incidents*. *Business Associate* shall provide Covered Entity upon written request a *Report* that: (a) identifies the categories of Unsuccessful Security Incidents; (b) indicates whether *Business Associate* believes its current defensive security measures are adequate to address all *Unsuccessful Security Incidents*, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures *Business Associate* will implement to address the security inadequacies.

5.3 *Business Associate* shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

6. Reporting and Documenting Breaches.

6.1 *Business Associate* shall *Report* to Covered Entity any *Breach* of Unsecured *PHI* as soon as it, or any Person to whom *PHI* is disclosed under this Agreement, becomes aware of any such *Breach*, and in no event later than five (5) business days after such awareness, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available.

6.2 Following the *Report* described in 6.1, *Business Associate* shall conduct a risk assessment and provide it to Covered Entity with a summary of the event. *Business Associate* shall provide Covered Entity with the names of any *Individual* whose Unsecured *PHI* has been, or is reasonably believed to have been, the subject of the *Breach* and any other available information that is required to be given to the affected *Individual*, as set forth in 45 CFR § 164.404(c). Upon request by Covered Entity, *Business Associate* shall provide information necessary for Covered Entity to investigate the impermissible Use or Disclosure. *Business Associate* shall continue to provide to Covered Entity information concerning the *Breach* as it becomes available.

6.3 When *Business Associate* determines that an impermissible acquisition, Access, Use or Disclosure of *PHI* for which it is responsible is not a *Breach*, and therefore does not necessitate notice to the impacted *Individual*, it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). *Business Associate* shall make its risk assessment available to Covered Entity upon request. It shall include 1) the name of the person making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the *PHI* had been compromised.

7. **Mitigation and Corrective Action.** *Business Associate* shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible Use or Disclosure of *PHI*, even if the impermissible Use or Disclosure does not constitute a *Breach*. *Business Associate* shall draft and carry out a plan of corrective action to address any incident of impermissible Use or Disclosure of *PHI*. *Business Associate* shall make its mitigation and corrective action plans available to Covered Entity upon request.

8. **Providing Notice of Breaches.**

8.1 If Covered Entity determines that a *Breach* of *PHI* for which *Business Associate* was responsible, and if requested by Covered Entity, *Business Associate* shall provide notice to the *Individual* whose *PHI* has been the subject of the *Breach*. When so requested, *Business Associate* shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. *Business Associate* shall be responsible for the cost of notice and related remedies.

8.2 The notice to affected *Individuals* shall be provided as soon as reasonably possible and in no case later than sixty (60) calendar days after *Business Associate* reported the *Breach* to Covered Entity.

8.3 The notice to affected *Individuals* shall be written in plain language and shall include, to the extent possible: 1) a brief description of what happened; 2) a description of the types of Unsecured *PHI* that were involved in the *Breach*; 3) any steps *Individuals* can take to protect themselves from potential harm resulting from the *Breach*; 4) a brief description of what the *Business Associate* is doing to investigate the *Breach* to mitigate harm to *Individuals* and to protect against further *Breaches*; and 5) contact procedures for *Individuals* to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.4 *Business Associate* shall notify *Individuals* of *Breaches* as specified in 45 CFR § 164.404(d) (methods of *Individual* notice). In addition, when a *Breach* involves more than 500 residents of Vermont, *Business Associate* shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

9. **Agreements with Subcontractors.** *Business Associate* shall enter into a Business Associate Agreement with any *Subcontractor* to whom it provides *PHI* to require compliance with HIPAA and to ensure *Business Associate* and *Subcontractor* comply with the terms and conditions of this Agreement. *Business Associate* must enter into such written agreement before

any Use by or Disclosure of *PHI* to such *Subcontractor*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *PHI*. *Business Associate* shall provide a copy of the written agreement it enters into with a *Subcontractor* to Covered Entity upon request. *Business Associate* may not make any Disclosure of *PHI* to any *Subcontractor* without prior written consent of Covered Entity.

10. Access to PHI. *Business Associate* shall provide access to *PHI* in a Designated Record Set to Covered Entity or as directed by Covered Entity to an *Individual* to meet the requirements under 45 CFR § 164.524. *Business Associate* shall provide such access in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for Access to *PHI* that *Business Associate* directly receives from an *Individual*.

11. Amendment of PHI. *Business Associate* shall make any amendments to *PHI* in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an *Individual*. *Business Associate* shall make such amendments in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for amendment to *PHI* that *Business Associate* directly receives from an *Individual*.

12. Accounting of Disclosures. *Business Associate* shall document Disclosures of *PHI* and all information related to such Disclosures as would be required for Covered Entity to respond to a request by an *Individual* for an accounting of disclosures of *PHI* in accordance with 45 CFR § 164.528. *Business Associate* shall provide such information to Covered Entity or as directed by Covered Entity to an *Individual*, to permit Covered Entity to respond to an accounting request. *Business Associate* shall provide such information in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any accounting request that *Business Associate* directly receives from an *Individual*.

13. Books and Records. Subject to the attorney-client and other applicable legal privileges, *Business Associate* shall make its internal practices, books, and records (including policies and procedures and *PHI*) relating to the Use and Disclosure of *PHI* available to the Secretary of Health and Human Services (HHS) in the time and manner designated by the Secretary. *Business Associate* shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether *Business Associate* is in compliance with this Agreement.

14. Termination.

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all the *PHI* is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If *Business Associate* fails to comply with any material term of this Agreement, Covered Entity may provide an opportunity for *Business Associate* to cure. If *Business Associate* does not cure within the time specified by Covered Entity or if Covered Entity believes that cure is not reasonably possible, Covered Entity may immediately terminate the Contract or Grant without incurring liability or penalty for such termination. If neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary of HHS. Covered Entity has the right to seek to cure such failure by *Business Associate*. Regardless of whether Covered Entity cures, it retains any right or remedy available at law, in equity, or under the Contract or Grant and *Business Associate* retains its responsibility for such failure.

15. Return/Destruction of PHI.

15.1 *Business Associate* in connection with the expiration or termination of the Contract or Grant shall return or destroy, at the discretion of the Covered Entity, *PHI* that *Business Associate* still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. *Business Associate* shall not retain any copies of *PHI*. *Business Associate* shall certify in writing and report to Covered Entity (1) when all *PHI* has been returned or destroyed and (2) that *Business Associate* does not continue to maintain any *PHI*. *Business Associate* is to provide this certification during this thirty (30) day period.

15.2 *Business Associate* shall report to Covered Entity any conditions that *Business Associate* believes make the return or destruction of *PHI* infeasible. *Business Associate* shall extend the protections of this Agreement to such *PHI* and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible for so long as *Business Associate* maintains such *PHI*.

16. Penalties. *Business Associate* understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of *PHI* and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations.

17. Training. *Business Associate* understands its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by Covered Entity, *Business Associate* shall participate in Covered Entity's training regarding the Use, Confidentiality, and Security of *PHI*; however, participation in such training shall not supplant nor relieve *Business Associate* of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

18. Miscellaneous.

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract or Grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the Contract or Grant continue in effect.

18.2 Each party shall cooperate with the other party to amend this Agreement from time to time as is necessary for such party to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA. This Agreement may not be amended, except by a writing signed by all parties hereto.

18.3 Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule, Security Rule, and HITECH) in construing the meaning and effect of this Agreement.

18.5 *Business Associate* shall not have or claim any ownership of *PHI*.

18.6 *Business Associate* shall abide by the terms and conditions of this Agreement with respect to all *PHI* even if some of that information relates to specific services for which *Business Associate* may not be a “*Business Associate*” of Covered Entity under the Privacy Rule.

18.7 *Business Associate* is prohibited from directly or indirectly receiving any remuneration in exchange for an *Individual’s PHI*. *Business Associate* will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. *Reports* or data containing *PHI* may not be sold without Covered Entity’s or the affected Individual’s written consent.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for *Business Associate* to return or destroy *PHI* as provided in Section 14.2 and (b) the obligation of *Business Associate* to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.